

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
RUSSELL W. BLAKE)	Division No.
Serve: 1401 South Carnegie Drive)	
St. Peters, MO 63376)	
)	
Defendant.)	

**PETITION FOR PERMANENT
INJUNCTION AND OTHER RELIEF**

Plaintiff State of Missouri, at the relation of Attorney General Jeremiah W. (Jay) Nixon, by and through counsel, states as follows in support of its Petition for Permanent Injunction and Other Relief (hereinafter "Petition"):

PARTIES AND JURISDICTION

1. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to §§407.020, and 407.100, RSMo. 2000.¹

2. Defendant Russell W. Blake is an individual whose last known address is 1401 South Carnegie Drive, St. Peters, Missouri 63776.

3. This Court has subject matter jurisdiction over this matter pursuant to §§407.020 and 407.100, which allow the Attorney General to seek injunctive relief, restitution, penalties and

¹ Unless otherwise noted all references to statutes are to Missouri Revised Statutes 2000.

other relief in Missouri circuit courts for violations of the Missouri Merchandising Practices Act, Chapter 407.

4. This Court has personal jurisdiction over the defendant because he is a resident of the State of Missouri.

5. Venue is proper in this Court pursuant to §508.010(1) because the defendant resides in St. Charles County, Missouri.

MERCHANDISING PRACTICES ACT

6. Section 407.020 provides, in pertinent part:

1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . is declared to be an unlawful practice. . . Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

7. Section 407.100, provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that

funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court, in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

FACTS

8. Plaintiff incorporates by reference paragraphs 1. through 7. above as if fully set forth herein.

9. Defendant Blake is, or has been, engaged in the business of construction and remodeling of residential buildings.

10. Upon information and belief, Plaintiff submits that Russell Blake has made various misrepresentations and false promises to consumers and has accepted thousands of dollars from consumers as downpayments for work he never performed.

11. Upon information and belief, Plaintiff submits that Russell Blake has failed and refused to pay refunds to those consumers from whom Blake took money as a downpayment but did not perform the work.

12. Upon information and belief, Plaintiff submits that Russell Blake made misrepresentations and false promises, and failed and refused to pay refunds to consumers from whom he took money as a downpayment but did not perform the work, to a number of consumers including, but not limited to, the following:

a. Mrs. Darlene Vogan, 8009 Morganford Road, St. Louis, MO 63123.

(1.) On or about June 29, 2001, Defendant Blake agreed to install a new front door and storm door for Mrs. Vogan for a total price of seven hundred fifty dollars (\$750.00). See copy of contract attached hereto as Exhibit A and incorporated herein by reference.

(2.) Defendant Blake promised Mrs. Vogan that he would begin the work on July 7, 2001. Id.

(3.) Mrs. Vogan gave Defendant Blake a check in the amount of three hundred seventy-five dollars (\$375.00) as a downpayment. See copies of check attached hereto as Exhibit B and incorporated herein by reference.

(4.) Defendant Blake promised Mrs. Vogan that he would complete the work no later than the end of July, 2001.

(5.) Defendant Blake did not begin the work on July 7, 2001.

(6.) When Mrs. Vogan called Defendant Blake to inquire as to why he had not begun the work, Blake told her that his daughter had a ball game and he needed to watch her play.

(7.) Mrs. Vogan and Defendant Blake then agreed that Blake would begin the work on July 14, 2001.

(8.) Again, Defendant Blake failed to begin the work on July 14, 2001.

(9.) Again, Defendant Blake told Mrs. Vogan that he did not begin the work on July 14, 2001, because his daughter had another ball game and he needed to watch her play.

(10.) Defendant Blake promised Mrs. Vogan that he would send a refund of her downpayment, but she did not receive a refund.

(11.) On or about July 28, 2001, Defendant Blake promised Mrs. Vogan that he and his wife would drive to Mrs. Vogan's house to deliver the refund, but he did not fulfill his promise.

(12.) Defendant Blake promised on numerous occasions to issue a refund to Mrs. Vogan but ne never fulfilled the promises.

(13.) Defendant Blake never started the work; never brought new doors to Mrs. Vogan's residence; and never refunded Mrs. Vogan's money.

b. Ms. Laura Bradley, 2352 Wallis, Overland, MO 63114.

(1.) On or about November 24, 2001, Defendant Blake agreed to do roof work and to install new gutters and downspouts on Ms. Bradley's home for a total price of two thousand five hundred ninety-one dollars (\$2,591.00). See copy of contract attached hereto as Exhibit C and incorporated herein by reference.

(2.) Defendant Blake promised to begin the work during the week of December 15, 2001. Id.

(3.) Ms. Bradley gave to Defendant Blake a check in the amount of one thousand three hundred dollars (\$1,300.00) as a downpayment. See copies of checks attached hereto as Exhibit D and incorporated herein by reference.

(4.) Defendant Blake did not begin the work during the week of December 15, 2001.

(5.) Each time Ms. Bradley spoke with Defendant Blake during the weeks subsequent, Blake offered an excuse as to why he had not begun the work.

(6.) In January, 2002, Ms. Bradley inquired of Defendant Blake as to the feasibility of upgrading to a different shingle, Blake responded that the requested upgrade was feasible, but that Blake would need additional money.

(7.) On or about January 18, 2002, Defendant Blake went to Ms. Bradley's residence and picked up a check in the amount of three hundred six dollars (\$306.00).

(8.) Defendant Blake never began the work; never dropped off materials at Ms. Bradley's residence; and never refunded her money.

c. Ms. Darcy Lane, 9501 Theodosia, Overland, MO 63114.

(1.) On or about December 1, 2001, Defendant Blake agreed to do roof work, install new gutters and downspouts, and other work on Ms. Lane's residence for a total price of three thousand nine hundred forty-five dollars (\$3,945.00). See copy of contract, attached hereto as Exhibit E and incorporated herein by reference.

(2.) Ms. Lane's boyfriend wrote a check in the amount of five hundred dollars (\$500.00) towards the downpayment. Id.

(3.) Defendant Blake promised to begin the work on January 1 [the contract states 1-01-01, but this, obviously, was meant to be 2002]. Id.

(4.) On or about December 8, 2001, Ms. Lane provided to Defendant Blake a check in the amount of one thousand four hundred seventy-two dollars (\$1,472.00) for the balance of the downpayment. See copy of check, attached hereto as Exhibit F and incorporated herein by reference.

(5.) Defendant Blake did not begin the work on January 1, 2002.

(6.) Defendant Blake made numerous promises to begin work for Ms. Lane but did not fulfill the promises.

(7.) Defendant Blake promised Ms. Lane that he would begin the work no later than the end of April or the beginning of May, 2002.

(8.) When Defendant Blake failed to fulfill the promise to begin work on Ms. Lane's residence no later than the end of April or the beginning of May, 2002, Ms. Lane informed Defendant Blake that she wanted to cancel the contract. Defendant Blake told her that he had purchased the materials and that she should wait until he was able to get there.

(9.) Defendant Blake never performed the work; never provided the materials for Ms. Lane's residence; and never provided a refund of the downpayment.

d. Ms. Christine Oldenburg, 9814 Midland, Overland, Mo 63114.

(1.) On or about January 22, 2002, Defendant Russell Blake agreed to do roof work on Ms. Oldenburg's rental property for a total price of two thousand thirty dollars (\$2,030.00). See copy of contract, attached hereto as Exhibit G and incorporated herein by reference.

(2.) Ms. Oldenburg provided to Defendant Blake a check in the amount of one thousand dollars (\$1,000.00) for a downpayment. Id. See also, copies of check, attached hereto as Exhibit H and incorporated herein by reference.

(3.) Defendant Blake promised Ms. Oldenburg that he would begin work on her property approximately one or two weeks after the contract signing date.

(4.) Defendant Blake did not begin the work within one or two weeks of the contract signing date.

(5.) Defendant Blake made numerous promises to begin work on Ms. Oldenburg's property, each of which was followed by an excuse as to why the work was not done.

(6.) When Ms. Oldenburg called him in October, 2002 Defendant Blake informed her that he would not perform the work, but that he would provide a refund of the downpayment by Friday, November 8, 2002 by leaving it in the mailbox at 9814 Midland, Overland, MO.

(7.) On November 8, 2002, Ms. Oldenburg found a money order in the amount of two hundred fifty dollars (\$250.00) that Defendant Blake left in the mailbox at 9814 Midland, Overland, MO.

(8.) When Ms. Oldenburg called Defendant Blake to inquire as to the next refund payment, Defendant Blake promised Ms. Oldenburg that he would make another refund payment by November 22, 2002.

(9.) Defendant Blake failed to make the refund payment by November 22, 2002.

(10.) Defendant Blake never started the work on Ms. Oldenburg's property; never provided the materials for the work; and never refunded the balance of the downpayment, i.e., seven hundred seventy-five dollars (\$775.00).

e. Ms. Kelly Lane, 3521 Dixie Drive, St. Ann, MO 63074.

(1.) On or about January 25, 2002, Defendant Blake agreed to do roof work on Ms. Lane's home for a total price of one thousand eight hundred eighty dollars (\$1,880.00). See copy of contract, attached hereto as Exhibit I and incorporated herein by reference.

(2.) Defendant Blake promised to begin and complete the work on Ms. Lane's residence immediately upon completion of the work on Ms. Lane's sister's home (see Paragraph 10.c. above).

(3.) Ms. Lane provided to Defendant Blake a check in the amount of nine hundred forty dollars (\$940.00) as a downpayment. See copy of check attached hereto as Exhibit J and incorporated herein by reference.

(4.) Defendant Blake never started the work on Ms. Lane's residence; never provided materials for the job; and never refunded her downpayment.

F. Ms. Lois Hofer, 7032 Lindenwood, St. Louis, MO 63109.

(1.) On or about April 29, 2002 Defendant Blake agreed to do roof work for Ms. Hofer for a total price of four thousand two hundred fifteen dollars (\$4,215.00). See copy of contract, attached hereto as Exhibit K and incorporated herein by reference.

(2.) Also on or about April 29, 2002, Defendant Blake agreed to do fascia and soffit work for a total price of one thousand seven hundred eighty-five dollars (\$1,785.00). See copy of contract attached hereto as Exhibit L and incorporated herein by reference.

(3.) Ms. Hofer provided to Defendant Blake a check in the amount of three thousand dollars (\$3,000.00) as a downpayment. See copy of check attached hereto as Exhibit M and incorporated herein by reference.

(4.) Defendant Blake promised Ms. Hofer that he would start working on her home on May 6, 2002.

(5.) Defendant Blake did not begin the work on Ms. Hofer's residence on May 6, 2002.

(6.) Defendant Blake made numerous promises to Ms. Hofer that he would begin the work; each promise was followed by an excuse as to why the work was not done.

(7.) On or about August 22, 2002, when Ms. Hofer telephoned Defendant Blake to inquire as to when her work would be completed, Defendant Blake promised Ms. Hofer that he would complete the work on her residence by September 5, 2002.

(8.) Defendant Blake did not complete the work by September 5, 2002.

(9.) Defendant Blake never started the work on Ms. Hofer's residence; never provided materials for the job; and never refunded Ms. Hofer's downpayment.

13. Upon information and belief, Plaintiff submits that Defendant Blake may have made similar misrepresentations and false promises, and may have failed to refund downpayments, to other Missouri consumers

VIOLATIONS OF MERCHANDISING PRACTICES ACT

COUNT I

14. Plaintiff incorporates by reference Paragraphs 1. through 13. above as if fully set forth herein.

15. Defendant Russell Blake employed misrepresentation and/or deception and/or false promises in connection with the sale of merchandise in trade or commerce by telling consumers that he would perform work on their residences and then failing to complete, or even begin, the work.

COUNT II

16. Plaintiff incorporates by reference Paragraphs 1. through 15. above as if fully set forth herein.

17. Defendant Russell Blake employed misrepresentation and/or deception and/or false promise in connection with the sale of merchandise in trade or commerce by telling

consumers that he would issue refunds of their downpayments and then failing to provide the promised refund.

COUNT III

18. Plaintiff incorporates by reference Paragraphs 1. through 17. above as if fully set forth herein.

19. Defendant Russell Blake has engaged in the unfair practice of failing to provide refunds to those consumers to whom he promised to perform certain work but for whom the work was never completed, or even started, and for whom no materials were provided.

RELIEF REQUESTED

WHEREFORE, in view of the foregoing, Plaintiff requests this Court to grant the following relief:

20. An Order of this Court finding that Defendant Russell Blake has violated the provisions of §407.020;

21. A permanent injunction issued pursuant to §407.100 prohibiting Defendant Blake from employing the methods, acts, uses or practices listed above;

22. An Order permanently enjoining Defendant Blake from owning, managing or operating a residential construction or remodeling business, or engaging in the business of residential construction or remodeling, except as an employee of a person who is engaged in the business of residential construction or remodeling and who is in good standing in the State of Missouri;

23. An Order awarding restitution to consumers for ascertainable loss suffered as a result of Defendant Blake's violations of §407.020;

24. An Order assessing civil penalties of not more than \$1,000.00 per violation pursuant to §407.100.6 for each violation of §407.020 committed by Defendant Blake in the course of his dealings with consumers;

25. An Order awarding to Plaintiff the costs of investigation and prosecution of this action pursuant to §407.130;

26. An Order awarding to Plaintiff an additional amount equal to ten percent of the total restitution pursuant to §407.140.3;

27. An Order assessing court costs against Defendant Blake; and

28. An Order containing such additional relief as may be just and appropriate in this action.

Respectfully submitted,

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